

Amend Sections 8105 and 60507 of the Revenue and Taxation Code to extend the period for filing a refund on tax-paid fuel.

Source: Honorable Claude Parrish

This proposal addresses a problem that has arisen during the course of fuel company audits and is intended to authorize the State Controller and the Board to accept claims for refund of tax from purchasers of fuel who otherwise would be entitled to a refund, but, due to circumstances beyond their control, are barred by the existing statute of limitations from applying for a refund.

Under the existing Motor Vehicle Fuel Tax Law, a person who pays tax on motor vehicle fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 8101. Among the uses for which a refund claim may be filed is the export of the fuel for use outside California. The claim for refund must be filed with the State Controller and supported by the original invoice showing the purchase of the fuel. Section 8105 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

Likewise, under the existing Diesel Fuel Tax Law, a person who pays tax on diesel fuel may apply for a refund on certain uses, sales and removals listed in Revenue and Taxation Code Section 60501. Among the uses for which a refund claim may be filed is the export of diesel fuel for use outside California. The claim for refund must be filed with the Board and be supported by specified information. Section 60507 requires that the claim for refund be filed within three years from the date of the purchase of the fuel.

In most situations, the statute of limitations for filing a claim for refund of tax presents no problem because tax is paid on the fuel at the time of purchase and a timely refund claim can be filed by the purchaser for tax-paid fuel used in an exempt manner. Sometimes, a supplier that properly documents a sale of fuel for export may sell fuel ex-tax to a purchaser who in fact exports the fuel. Because no tax is owed and because the supplier has properly documented the sale for export transaction, no refund claim is necessary.

A problem does arise, however, if a supplier fails to meet the statutory requirements for making an ex-tax sale of fuel to a purchaser for export. This fact may be uncovered several months or years after the transaction occurred during the course of an audit of the supplier. While the supplier may owe the tax, the purchaser may not if the use was exempt from tax. Nevertheless, if the supplier pays the tax to the State, then it will charge its customer for the tax, the customer must pay the supplier and then seek a refund of tax from the State. In some cases, a purchaser's claim for refund may be barred by the statute of limitations because the supplier's invoice for tax to the customer may be issued more than

three years after the date of the purchase of the fuel. When a purchaser's claim for refund is barred by the statute of limitations, the only recourse for the purchaser is to file a claim with the Board of Control for the amount of the tax. Board staff would likely recommend to the Board of Control that the claim be granted because the fuel was exported and was not used on a California highway.

This proposal will allow for a refund claim to be filed within three years from the date of purchase or six months after the receipt of an invoice for the tax when the tax was not invoiced at the time of the purchase of the fuel, whichever period expires later.

Section 8105 of the Revenue and Taxation code is amended to read:

8105. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the motor vehicle fuel or, if the tax was not invoiced at the time of the purchase of the motor vehicle fuel, the application for refund shall be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the Controller, the Treasurer, or the state.

Section 60507 of the Revenue and Taxation code is amended to read:

60507. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the diesel fuel or, if the tax was not invoiced at the time of the purchase of the diesel fuel, the application for refund shall be filed within six months after the receipt of an invoice for the tax, whichever period expires later. Any application filed after the time prescribed shall not be considered for any purpose by the board, the Treasurer, or the state.